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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

Roberto Carlos HERNANDEZ-Montalvo,

Defendant

2007 OCT 2 9:07 AM MJ 2353
Magistrate Docket No. 9:07 MJ 2353CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COMPLAINT FOR VIOLATION OF:

Title 8, U.S.C., Section 1326

Deported Alien Found in the
United States

The undersigned complainant, being duly sworn, states:

On or about **October 1, 2007** within the Southern District of California, defendant, **Roberto Carlos HERNANDEZ-Montalvo**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.




SIGNATURE OF COMPLAINANT

Terri L. Dimolios

Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 2nd DAY OF OCTOBER,
2007



Ruben B. Brooks

UNITED STATES MAGISTRATE JUDGE

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CONTINUATION OF COMPLAINT:**Roberto Carlos HERNANDEZ-Montalvo****PROBABLE CAUSE STATEMENT**

On October 1, 2007, Border Patrol Agent Martinez was advised by the Remote Video Surveillance System (RVSS) operator of a group of individuals climbing the secondary fence behind a building known as the GSA (General Services Administration) Building. This area is approximately 20 yards north of the United States/Mexico International Border Fence and half a mile east of the San Ysidro, California Port of Entry. Upon reaching this area Agent Martinez encountered two individuals attempting to conceal themselves under a stairwell behind the GSA Building. Agent Martinez identified himself as a Border Patrol Agent and conducted an immigration inspection. Both individuals, including one later identified as the defendant Roberto Carlos HERNANDEZ-Montalvo, admitted to being citizens and nationals of Mexico not in possession of any immigration documents that would allow them to enter or remain in the United States legally. Both subjects were arrested and transported to the Imperial Beach Border Patrol Station for further processing.

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to Mexico on **October 5, 2004** through **Otay Mesa, California**. These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.

The defendant was advised of his Miranda Rights, which he stated that he understood and was willing to answer questions without having an attorney present. The defendant again admitted to being a citizen and national of Mexico previously ordered removed without permission to legally re-enter the United States.